INFORMATION LETTER

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Wage-Hour Legislation

The Senate Labor Subcommittee this week began hearing testimony from employer groups on proposals to amend the Fair Labor Standards Act.

Senator Douglas (Ill.), chairman of the subcommittee, announced that the oral testimony of all employer groups except the National Association of Manufacturers and the U. S. Chamber of Commerce would be limited to 10 minutes. He also announced that there would be five days of hearings with two sessions a day allotted to employer groups.

USDA Appropriations

The Senate on April 26 passed H. R. 5239, making appropriations for the U. S. Department of Agriculture, after striking out of the bill a House-passed provision earmarking $1,000,000 for a price spread study.

The House had earmarked that sum for a "special study on the price spread between the farmer and the consumer." USDA told the Senate Appropriations Committee that such a study would be carried on as a regular Department activity and that the earmarking of funds created an administrative problem. The Committee recommended that the proviso be stricken from the bill, and the Senate followed the Committee recommendation.

As passed by the Senate, the bill provides $884,433,923 for regular activities. This is $4,173,873 more than the amount voted by the House and exceeds appropriations for the current fiscal year by $230,822,463.

Both the House- and Senate-passed bills provide the same amount for the school lunch program that was appropriated last year.

A summary of the report of the Attorney General's 60-man National Committee to Study the Antitrust Laws is published in this issue of the INFORMATION LETTER beginning on page 197.

Hoover Commission Recommends Centralized Buying of Food under Notices of Intent to Purchase and Negotiated Contracts

Complete centralization of government food and subsistence procurement was recommended in a report by the Hoover Commission on "Food and Clothing" issued on April 25. The report proposes that the Secretary of Defense designate a single central agency to handle food procurement and supply for all the armed services and that the General Services Administration assume similar responsibilities for all of the civilian agencies except for the Department of Agriculture's price support operations.

Another major recommendation of the report is that the "notice of intent to purchase and negotiated contracts" method of procurement be extended to all food purchases. This is the method by which the annually packed canned foods now are being procured by virtue of a Presidential proclamation, in 1950, that a "national emergency" exists. Termination of the national emergency would require a return to the advertised bid method of procurement. The Hoover Commission recommendation would require legislative action to legalize the current so-called negotiated type of procurement in peacetime.

The Commission report on "Food and Clothing" incorporates some of the work of its Subsistence Services Task Force. Copies of the report of the task force are not yet available.

The text of the Commission's recommendations No. 1 and No. 4, which deal with food, are as follows:

RECOMMENDATION NO. 1

"(1) That the Secretary of Defense designate some central agency, to—

"(a) Make food purchases for the services upon their stated requirements subject to check by the Secretary of Defense;

"(b) Make all food purchases on the basis of 'notice of intent to purchase and negotiated contracts' as is now done in connection with perishable food subject to periodic examination and report by the Comptroller General;

"(c) Establish and maintain central inventory records;

"(d) Consolidate and have charge of all warehouses or food depots, both dry and refrigerated;

"(e) Be responsible for supplying food to bases of all services as the services may designate;

"(f) Undertake all inspection except that made by the services upon receipt of supplies at the bases;

"(g) Establish a uniform ration for all services with exceptions for special services and climates;

"(h) Set up master menus with the cooperation of the services;

"(i) Improve further the service facilities at the mess level;

"(j) Establish systematic training for such service at the mess level.

"(2) That personnel administering the activities of this central agency be properly qualified or trained for such service; and that the military personnel be required to serve continuously over considerable periods and be given rank and promotion comparable to that in the combat military services.

"(3) That directives of the Secretary of Defense in this field be enforced by disciplinary action if necessary."

RECOMMENDATION NO. 4

"That the General Services Administration should assume responsibility for the procurement and distribution of food and common-use articles for consumption by all civilian agencies, and that cross-servicing arrangements be developed with the Quartermaster General Market Center."

Three members of the 12-man Commission dissented from the recommen-

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Veterans Administration's Requirements from 1955 Pack

The Veterans Administration has made available to the N.C.A. a list of the agency's estimated requirements for canned fruits, vegetables, and fish from the 1955 pack.

Invitations for bids will be issued by the General Supplies Section, Procurement Division, Supply Service, Veterans Administration, Washington 25, D. C.

Family Circle Magazine

One of the food articles appearing in the May issue of *Family Circle* magazine features canned corn. The magazine is sold in retail food stores throughout the country.

The article is entitled "Canned Corn Makes These Extra Good," with a subtitle that says, "and extra thrifty, too, for it's a budget buy right now. Choose whole kernel or cream style for these new supper dishes that we think will become old favorites." The five recipes given are shown attractively arranged for serving in a full-page color photograph.

Along with corn, canned stewed tomatoes, pimiento, corned beef hash, and tomato soup are used in the recipes.

Hoover Commission

(Concluded from page 195)

dation that the "notice of intent to purchase and negotiated contract" method be used in peacetime as well as in times of emergency or actual war. The dissenters are Herbert Brownell, Jr., James A. Farley, and Chet Holifield. Attorney General Brownell stated that he is "not in favor . . . of barring the use of the 'advertisement and bids' method of purchase" but that purchases of food on the basis of "notice of intent to purchase and negotiated contract" should be authorized "when advantageous to the government."

The former Postmaster General, James A. Farley, reported that the "advertisement and bids" method should be the regular method and that the Commission's proposal should be used only "when circumstances warrant." Mr. Farley, in effect, endorsed the present language in the Armed Forces Procurement Act by his comment that "Congress established a sound policy . . . by requiring the agency head to determine when circumstances warrant deviation from the competitive bid basis for procurement."

The majority of the Hoover Commission, however, justified its recommendation on the basis that public "advertising for large quantities raised prices in the market," compelled the acceptance of commodities at higher prices than those of the lowest bidder to fill total requirements, and resulted in excessive administrative costs.

The Commission report cited a hypothetical situation involving the procurement of khaki trousers wherein five low bidders under the advertised method submitted the following bids on a procurement of 100,000 items:

20,000 at	$0.675
25,000 at	.69
20,000 at	.705
15,000 at	.71
20,000 at	.712

In this situation, awards would have to be made to all 5 bidders.

However, the report explained, "under the system of 'notice of intent to purchase and negotiation of contract' it would be possible for the contracting officer to negotiate with the higher four bidders for a better price and in fact with all five bidders. Negotiation with the low bidder could take two forms; first, to get him to take a larger quantity at the bid price, and second, to even further reduce his price if this was deemed advisable and proper."

The Walsh-Healey Public Contracts Act was cited by the Commission as the first of seven federal policies that complicate government procurement, by setting up "legal hurdles." The others include the anti-discrimination because of race, creed, or color executive order of 1943, the small business "fair share" requirement of the Defense Production Act, the Buy American Act, the Blind-Made Products Act, and the Federal Prisons Industries Act.

Veterans Administration's Requirements from 1955 Pack

Following are the estimated requirements of the Veterans Administration for canned fruits, vegetables, and fish to be procured from the 1955 pack—by grade, can size, and quantity in dozens:

Description	Grade	Can Size	Dozen Cans
CANNED FRUITS AND FRUIT JUICES			
Apples, sliced, heavy pack	C	#10	7,500
Applesauce	A	#10	7,500
Apricots, halved, unpeeled, water pack	B	#303	8,350
Apricots, halved, unpeeled, heavy syrup	B	#10	6,250
Apricots, halved, peeled or unpeeled, solid pack—no added water or syrup	D	#10	1,750
Blueberries, native or cultivated, water pack	C	#10	3,000
Cherries, R8P, water pack	C	#10	6,250
Cherries, light sweet, unpitted, water pack	B	#303	8,350
Cherries, light sweet, unpitted, heavy syrup	B	#10	5,000
Figs, Kadota, water pack	B	#303	4,200
Figs, Kadota, heavy syrup	B	#10	5,000
Fruit cocktail, heavy syrup	B	#10	8,000
Grapefruit, light syrup	B	#2	20,850
Grapes, Thompson's seedless	Fancy	#10	1,250
Juice, Grape, Concord, unsweetened	A	#10	5,000
Juice, Grapefruit, natural	A	46-oz.	30,000
Peaches, yellow clingstone, halved, water pack	B	#303	11,850
Peaches, yellow clingstone, halved, heavy syrup	B	#10	13,350
Peaches, yellow clingstone, halved or quartered, solid pack—without water or syrup	D	#10	2,250
Pears, Bartlett, halved, water pack	B	#303	9,000
Pears, Bartlett, halved, syrup pack	B	#10	12,500
Pineapple, slices (whole), medium, water pack	A	#2	5,850
Pineapple, slices (whole), medium, extra heavy syrup	A	#10	5,000
Pineapple, crushed, heavy pack, sweetened extra heavy	A	#10	3,000
Pineapple, tidbits, extra heavy syrup	A	#10	3,750
Pineapple juice	A	#10	20,000
Plums, purple, fresh, water pack	B	#303	5,000
Plums, purple, fresh, heavy syrup	B	#10	3,000
Plums, greengage or yellow egg, heavy syrup	B	#10	1,000
Sauce, Cranberry, jellied or strained	A	#10	1,040
CANNED VEGETABLES AND VEGETABLE JUICES			
Beans, Lima, tiny, small, medium and/or large	B	#10	7,000
Beans, Dried, regular process, red, in brine	A	#10	2,500
Beans, Green, cut (¾"—1¼"), round—sizes 2, 3, 4, 5 and/or 6, or flat—sizes 3, 4 and/or 5	B	#10	20,000
Beets, sliced, medium size	A	#10	10,000
Beets, Puree	—	#2	6,700
Carrots, sliced or diced	C	#10	3,500
Carrots, Puree	—	#2	10,850
Catsup, tomato	A	#10	5,650
Corn, cream style, golden	B	#10	6,700
Corn, whole grain, golden	B	#10	10,000
Hominy, lye	Fancy	#10	2,000
Juice, Tomato	A	#10	16,350
Juice, Vegetable Cocktail	—	46-oz.	7,500
Mushrooms, white, stems and pieces	C	16-oz.	7,000
Peas, sweet, sieve 3, 4, or 5 or any combination 1—6, 70% 3, 4 and/or 5	B	#10	20,000
Peas, Puree	—	#2	12,500
Potatoes, Sweet, whole and pieces in light syrup	A	#2½	26,700
Pumpkin	A	#10	1,750
Sauce, Chili	A	#10	1,000
Sauerkraut	A	#10	3,750
Tomatoes	B	#10	25,000
Tomato puree, medium	A	#10	12,350
CANNED FISH			
Salmon, red or sockeye	—	#1	25,000
Tuna fish	Fancy	#1	25,000

Summary of the Report of the Attorney General's National Committee to Study the Antitrust Laws

On March 31, 1955, there was presented to Attorney General Brownell the report of a 60-man Committee appointed by him in July, 1953, at the request of President Eisenhower, to make "a thoughtful and comprehensive study of our antitrust laws." The co-chairmen of this Committee were Stanley N. Barnes, Assistant Attorney General in charge of the Antitrust Division, and S. Chesterfield Oppenheim, professor of law, University of Michigan Law School. Members of the Committee included lawyers representing all types and sizes of business, law professors, and economists, all of whom were selected as specialists in the antitrust field. No member of the Committee was picked as a representative of any particular industry, section of the economy, or law firm. The aim was to bring together a group of competent experts in the antitrust field who would reflect interacting views on all issues of antitrust policy.

The 393-page report, filed by the Committee after almost two years of intensive deliberation, covers the entire field of antitrust policy and enforcement. It deals with eight major antitrust areas: Unreasonable restraints of trade and monopoly under the Sherman Antitrust Act; the impact of the American antitrust laws upon foreign trade and the operations of American companies abroad; the legality of mergers; antitrust policy in distribution; patent antitrust problems; exemptions from antitrust coverage, *i.e.*, regulated industries such as railroads and airlines, organized labor, agricultural cooperatives; the economic indicia of competition and monopoly; and antitrust administration and enforcement by the Department of Justice and the Federal Trade Commission.

The principal conclusions and recommendations of the Committee are summarized below with particular emphasis upon those portions of the report which are of more immediate interest to canners. In context, the report is a fairly specialized and technical examination of statutory texts, court proceedings and decisions, and the historical development of the antitrust laws. Discussion of each subject is interrelated and many of the Committee's recommendations are interdependent. Nevertheless, an effort will be made to summarize each of the Committee's conclusions and recommendations in non-legal language.

Over-all, the Committee was unanimous in endorsing the basic American antitrust policy against any form of monopolizing, price fixing, controlling production, or restraining trade. In its approach to each specific problem, the Committee took as its guide the premise that it is the function of the antitrust laws to foster and to protect free and open competition in every line of business activity.

The Sherman Act

The basic antitrust law is the Sherman Act which prohibits both unreasonable restraints of trade and monopoly or attempts to monopolize. As to the former, the Committee recommended that the courts apply what has come to be called the "rule of reason," turning the legality of business conduct collectively carried on by two or more businessmen (whether they are competitors, or buyers and sellers) upon an examination of whether the conduct criticized in fact restrains trade.

The Committee endorsed the judicially developed rules that certain forms of conduct are on their face sufficiently restrictive as to constitute *per se* or automatic violations. These include agreements to fix prices or to control production, and boycotts.

Whether other types of contracts or agreements violate the Sherman Act, *e.g.*, territorial dealer franchises, was recommended to be made dependent upon their actual effect on competition. The Committee further recognized that arrangements between parent companies and wholly-owned subsidiaries were not illegal, insofar as they represented the operations of a single business enterprise, but that the use of subsidiary companies affords no insulation from the antitrust laws.

Comparable or identical conduct, in pricing or merchandising, by competitors—so-called "conscious parallel action"—was recognized as possible circumstantial evidence of illegal agreement but deemed not of itself to be illegal since in a highly competitive industry competition might well cause this same result.

As to Section 2 of the Sherman Act, which prohibits monopoly or attempts to monopolize, the Committee suggested that size is an earmark of monopoly power but must always be viewed in the market context of the particular business. A monopoly position in a market, the report suggests, is not always equivalent to deliberate monopolization but its legality is dependent upon how such power was acquired, maintained, or used. In its comprehensive analysis of the operation of the Sherman Act in this monopoly area, the Committee recommended that the legality of any percentage command of a market would vary from industry to industry, and concluded that where a company had a monopoly position the burden should be upon it to show that its position has resulted *solely* from superior skill, superior products, natural advantages (including accessibility to raw materials or markets), economic or technological efficiency (including scientific research), low margins of profit permanently maintained without discrimination, or a lawful license such as a patent or governmental franchise.

With respect to the Sherman Act the Committee made no recommendations for legislative change but urged vigorous enforcement; the continuance of the *per se* rule against price fixing, production controls, and division of markets; and the application of the "rule of reason" to other types of agreements, such as exclusive dealer franchises. It recommended against courts finding conspiracy among wholly owned subsidiary corporations run as a single enterprise, or finding illegal agreement merely because everyone in the same industry does business in the same fashion, or because of membership in a trade association.

As to monopoly, the Committee recommended that the courts carefully define the relevant market so as to include all realistic substitute products, the measurement of market position in the context of a particular industry, and the enforcement of the antimonopoly prohibition so as not to impair business efficiency.

Foreign Commerce

With respect to the operation of the American antitrust laws on companies doing business abroad, the Committee urged that the Sherman Act apply to all situations where agreements with foreign competitors result in substantial anticompetitive effect either on American domestic business or on American foreign commerce. It urged that the definition of commerce be construed broadly to include not only the importation and exportation of finished products but also agreements concerning capital investment and financing. In these areas it recommended that the "rule of reason" be applied in the light of restrictions applied by foreign governments upon the operation of American companies abroad. The Committee also recommended that the Webb-Pomerene Act permitting the use of export associations be continued.

Mergers

The Committee urged that there be vigorous enforcement of the Celler Anti-merger Act of 1950 in which it believed that Congress had clearly intended a more effective prohibition against mergers. As to vertical acquisitions, *e.g.*, where a company buys either a source of supply or a distribution outlet, the Committee suggested as a test whether the merger would foreclose competition by others in a substantial share of the market. In horizontal mergers between competing companies, the test suggested was whether the competitor lost, as a result of the merger, may in the context of the market as a whole constitute a substantial lessening of competition or tend toward monopoly.

The report suggests that no single pattern of proof controls the legality

or illegality of a particular merger. There must be a careful examination of the circumstances of each case to permit a reasonable conclusion as to its probable economic effects. In this connection the report sets forth a series of relevant inquiries directing detailed examination in merger cases of the character of the acquiring and the acquired company, the characteristics of the markets affected, the immediate changes in size and competitive range of the acquiring company, the adjustments which would have to be made by other companies operating in the same markets, and the probable long-range differences in competitive opportunity that the merger might make for these other companies and those who desire to enter the business.

Distribution

About one-third of the report deals with antitrust policy in distribution. Most of the current comment has been directed to particular portions of this part of the report which as a whole deals with the legality of refusals to sell, exclusive dealing, resale price maintenance or "fair trading," and price discrimination under the Robinson-Patman Act.

In an introductory historical analysis of the development of the antitrust laws as they apply to distribution, the report points to a number of inconsistencies which have evolved and to the collisions of the Fair Trade Acts and the Robinson-Patman Act with the basic philosophy underlying the Sherman and Clayton Acts. The Committee concluded that the courts had "evolved one fundamental accommodation to protect competitive distribution—resolution of every statutory doubt in favor of the Sherman Act's basic antitrust directives." Accordingly the report suggests that "Statutory provisions affecting distribution should, therefore, be applied to reflect not only reasonable clarity and internal consistency, but, above all, to remove market barriers to efficient distribution and thus serve basic antitrust objectives."

As to refusals to deal, the Committee recommended that in the absense of conspiracy of monopolization, a refusal by one businessman to deal with another is standing alone no violation of the antitrust laws. It may be evidence of other violations such as illegal resale price maintenance or an attempt to monopolize. Accordingly, the Committee recommended that all refusals to deal must be examined in the business setting in which they appear. Concerted refusals to deal, *e.g.* boycotts, are vigorously condemned. The individual right to select customers, when not part of an attempt to monopolize or to foster a restraint of trade, is characterized as legitimate.

In the area of exclusive dealing, the Committee vigorously condemned tying arrangements whereby the purchase of one product is required as a condition to buying another in which the seller has a dominant position. The report concludes that virtually all tying arrangements violate either the Sherman Act or the Clayton Act.

Exclusive dealing of other kinds, such as requiring a buyer not to handle competing lines, or the use of requirements contracts, are to be viewed in terms of whether they result in any actual foreclosure of competitors. If they do have an adverse market effect, the report concludes that they should be held illegal whenever the foreclosure operates in a quantitatively significant part of the market.

The majority of the Committee recommended that the McGuire Act exempting fair trade resale price maintenance contracts from the antitrust laws be repealed. Recognizing that nationally advertised and branded products can be used as loss leaders, the Committee concluded that fair trade pricing was not an appropriate instrument for protecting the manufacturer's good will. It felt that the fair trade laws extended beyond the necessary protection against loss leader selling and enabled distributors to extinguish price competition. On balance, the majority of the Committee concluded that fair trade pricing was fundamentally in conflict with antitrust policy.

Robinson-Patman Act

The Committee reviewed and generally endorsed most current interpretations of the Robinson-Patman Act. As to "like grade and quality," the Committee divided as to whether the use of different brand names on identical goods amounted to a difference in grade or quality that could alone justify different prices. The majority, however, recommended, that differences in brand names or labeling on identical goods should not be considered a difference in grade or quality, but that differences in pricing of identical goods based on varying brand acceptance should be measured in terms of possible competitive effect or cost justification. Only actual and genuine physical differences in products, in the Committee's view, should remove differential pricing from the coverage of the Robinson-Patman Act.

The report urges that proof of probable competitive injury was essential to violation of the law. This probable effect, the report recommends, should not be based upon presumptions (that is, be presumed from a mere difference in the prices charged), but should be grounded on a realistic factual inquiry into the effect of the price difference in the actual market. The Committee urged that effect upon competition should

"center on the vigor of competition in the market rather than hardship to individual businessmen. For the essence of competition is a contest for trade among business rivals in which some must gain while others lose, to the ultimate benefit of the consuming public. Incidental hardships on individual businessmen in the normal course of commercial events can be checked by a price discrimination statute only at the serious risk of stifling the competitive process itself."

The report emphasizes that it is not injury to competitors but adverse effect upon competition that is prohibited by the Act.

As to cost justification, the Committee observed that any accounting apportionment of costs essentially involved subjective business judgment, rather than objective fact, and recommended that

"a reasonable approximation of production or distribution cost variances to price differentials—when demonstrated in good faith through any authoritative and sound accounting principles—suffice as a matter of law"

to cost justify such price differences. On this test, it suggested that the cost defense should be permitted where the "price variation reasonably related to economies in *any* of the seller's costs deriving from significant differences among customers or broad categories of commercial transactions."

The Committee further recommended that the so-called "quantity limits" proviso be repealed on the ground that, even though it has been unused for 15 years, it is an ambiguous and confusing provision which threatens price differentials that reflect economies in efficient distribution, thus offending the interest of consumers in lower prices. The report urged repeal of this provision on the ground that "any rational antitrust policy must leave the American business community free to explore new methods of distribution" and, hence, the ambiguous quantity limits provision singling out and penalizing the use of quantity discounts is inconsistent with broader antitrust policy.

"Changing Conditions" Exemption

The report urged a broad interpretation of the proviso which permits price changes readily to reflect "changing conditions." This provision, the Committee suggested, was designed to permit businessmen freedom to react realistically to the movements of a dynamic market. It urged that the ability of a businessman to change his price should not be limited to the deterioration of the goods or by his own business position, but permitted whenever it is necessary to meet any spontaneous shift in market conditions beyond the seller's control. Accordingly, a seller ought to be able to make commercial adjustments in good faith by revising his prices on short notice if market conditions require him to do so.

The Committee endorsed the decisions of the Supreme Court making the defense of meeting competition in good faith an absolute defense to a

charge of price discrimination. It urged that these decisions were consonant with basic antitrust policy, and that the defense of meeting competition should be available to a seller unless he knew or had reason to know that the price he was meeting was unlawful. In addition, the report suggests that in interpreting the meeting of competition defense, the real values and market acceptance of advertised and non-advertised branded goods ought to be considered. In practical operation, the report suggests, the seller of a less accepted brand may find it necessary to cut below the competitive price of a more popular product. Conversely, the seller of a premium product ought not to be permitted to lower his price to the price level of a product with less market acceptance. "In each case, the heart of the matter is whether actual competition, not merely a nominal price quotation, is equalized."

The report urges further that the good faith meeting of competition should be permitted, not only in sporadic or isolated cases, but whenever it is necessary for a seller to cope with competitive prices. Lastly, the report urged that meeting competition related to the laid-down cost of the goods to the buyer and should not be confused with arguments about delivered price selling or f.o.b. factory pricing. In all cases, however, the burden of establishing his "good faith" in meeting competition is to remain with the seller.

On these issues as to the meeting of competition in good faith, several members of the Committee dissented, urging that the existing rulings of the Supreme Court be changed by legislation.

The Brokerage Provision

The report points out that the brokerage provision of the Robinson-Patman Act, designed to prevent the payment of bogus brokerage as an indirect price concession, was never expressly conditioned on showing that there was any injury to competition and did not permit the other defenses under the law to be available. The Committee concluded that the judicial interpretation of this provision has turned it into a simple prohibition on payments to all distributing intermediates except wholly independent brokers. It pointed out that the phrase "except for services rendered" has been read by the courts to mean "except for services rendered by an independent broker."

In view of the widespread interest in this part of the report the Committee's conclusion is given in full:

"The Committee considers the prevailing interpretations of the 'brokerage' clause at odds with broader antitrust objectives. Goods are sped to the consumer through marketing functions, whether performed by independent 'brokers' or other businessmen who have invested capital and services in the 'middleman' phase of the marketing process. A legal disqualification of all but the 'pure' broker's distributive services is thus at variance with business realities. Moreover, the essence of antitrust policy in distribution is to assure that the consumer benefits by vigorous competition along each step of the way. Yet the 'brokerage' clause as presently interpreted enacts a preferred position for the 'independent' broker, thus discriminating against competing firms in distribution who are arbitrarily denied compensation for genuine marketing functions which they perform. Joint buying organizations for pooling the resources of small businessmen have conspicuously suffered from rigid 'brokerage' clause enforcement. In our opinion, the virtual legal monopoly conferred by Section 2 (c) on one type of middleman clogs competition in the channels of distribution, and exacts tribute from the consumer for the benefit of a special business class.

* * * *

"But, more fundamentally, the Committee disapproves the present disparity in the statutory consequences which attach to economically equivalent business practices. Today, 'direct" or 'indirect' price discriminations under Section 2 (a) do not transgress the law unless they cause adverse market effects and unless unjustifiable under one of the defensive provisos. In contrast, 'brokerage' concessions or 'proportionally unequal' allowances or services are illegal *per se*. This legal quirk facilitates manipulation and fosters confusion, since the Act places a premium on cloaking any concession in terms of a desired legal result. Virtually identical trade practices have been deemed 'allowances' in one case and 'indirect discriminations' in another, while the 'brokerage' clause has been invoked even against reductions in *net price* in direct transactions which dispensed with fees for independent brokers. The decisions, moreover, reveal no guide for distinguishing a justifiable 'indirect' discrimination from a flat *per se* offense. Such legal incongruities, we believe, frustrate equally the Commission's legitimate enforcement objectives and businessmen's good faith attempts to comply.

"We therefore favor reconciliation of Sections 2 (c), (d), and (e) with the remainder of the Act. Antitrust enforcement should not be complicated by diverse legal consequences solely dependent on whether a discriminatory concession masquerades as a 'brokerage', 'allowance', or 'service' rather than a naked quotation in price. For, as the Supreme Court has recognized, in any reasonable implementation of antitrust objectives 'the crucial fact is the impact of the particular practice on competition, not the label that it carries.' And we consider 'broader antitrust objectives' opposed to legal interpretations which penalize normal business conduct either wholly harmless in market effects, or at least justifiable in terms of the defenses authorized in price discrimination cases. Consequently, the statutory policy governing brokerage as well as allowances or services should be harmonized with the over-all standards controlling the remainder of the Act.

"An administrative reinvigoration of the 'for services rendered' exception in the brokerage clause—in order to recognize every genuine distributive function performed by any form of legitimate business enterprise—would ensure equal treatment of all types of distribution, and revive that competition in the distribution process whose benefits the customer must now by law forego. Such reconsiderations of more than a decade of administrative rulings, however desirable, is complicated by numerous appellate adjudications which affirm the Commission's previous restrictive interpretations.

"For this reason, in order to reconcile the brokerage clause with 'broader antitrust objectives,' we favor legislation as necessary to restore the original vigor of the exception 'for services rendered' in Section 2 (c)."

Advertising and Promotion Allowances

The Committee recommended further that advertising and promotional allowances be placed on an equal footing with outright price discriminations and be measured in the same fashion. In this view, the giving of discriminatory advertising allowances would "not transgress the law unless they cause adverse market effects and unless unjustifiable under one of the defensive provisos."

A considerable portion of the report is devoted to an analysis of functional discounts, that is, the giving of different prices to wholesalers and retailers. The report recommends that the validity of these functional discounts be measured by their probable effect upon competition. It points out that the classification of buyers is often neither precise nor constant.

"In our dynamic economy classifications of buyers are often not precise or constant in meaning. At one time wholesalers, jobbers, and retailers comprised clear-cut identifiable separate links between the manufacturer and the ultimate consumer, each responsible for a clearly defined set of duties. But the needs of consumers and of business enterprises have called into being a host of distributive organizations which do not readily fit into this simple classification. Marketing functions are 'scrambled', with many permutations and combinations. Many jobbers and brokers contribute genuine services, though assuming

only a part of the traditional full-time wholesaler's job which has become further subdivided. In many other areas there is a contrary tendency toward integration of distributive functions. Manufacturers often do much of their distribution. Retailers have integrated into wholesaling, and wholesalers into retailing, either by outright ownership or by cooperative arrangements. The number of patterns is legion. Any marketing function may be performed by a specialist who does nothing else, or by any integrated concern which does much more. This proliferation of modern marketing units defies neat nomenclature and descriptive labels."

To resolve these problems the report recommends that the seller who affords a functional discount not be held responsible for how his customer prices the goods on resale provided he takes reasonable care that the discount is paid only on those goods which are resold at wholesale rather than at retail.

On delivered price selling, the report condemns conspiracies to sell only at delivered prices, and recommends that these be prosecuted under the Sherman Act rather than the Robinson-Patman Act. Absent conspiracy or collusion, the report suggests that delivered price selling and freight equalization be considered under the ordinary rules controlling individual pricing under the Robinson-Patman Act.

The Committee unanimously recommended repeal of the Borah-Van Nuys criminal provision on the ground that its language is inconsistent with the remainder of the statute, that this section has in fact never been used as a basis for prosecution, and that there are doubts as to the constitutionality of its legally redundant language.

With respect to the responsibility of the buyer for inducing or receiving a price discrimination, the Committee endorsed the interpretation given by the Supreme Court that the buyer be held to have acted illegally only where he knew or should have known that the price concession exacted was illegal.

Patent-Antitrust Problems

The Committee report deals comprehensively with the relation between patents and the antitrust laws. It suggested that the acquisition of a patent is not an antitrust violation unless it is a part of a larger antitrust offense. The report further developed the limits of permissible patent licensing, and the fixing by the licensor of the resale prices of the patented product. It condemned the use of patents for control of unpatented materials, and outlined the antitrust limits of using patent pools. It recognized that infringement suits may be legitimate efforts to enforce a patent or parts of a scheme to monopolize dependent in each case upon particular facts. By a close division, the Committee condemned compulsory royalty-free licensing of patents as an antitrust penalty.

Exemptions

The chapter on exemptions deals with regulated industries, such as railroads, motor carriers, air lines, radio stations, etc. In general, the report concluded that the regulatory agencies in considering whether to approve mergers, rate agreements, or access to the industry through the granting of new franchises, ought to be guided by the basic policy of the antitrust laws putting a premium upon free competition.

As to organized labor, the Committee recognized that the problem of labor-management relations goes beyond any antitrust study, and confines itself to discussing union activities, not directed at established union ends, but at direct restraints on competition. The report urged that "union actions aimed at directly fixing the kind or amount of products which may be used, produced or sold, their market price, the geographical area in which they may be used, produced or sold, or the number of firms which may engage in their production or distribution are contrary to antitrust policy."

The Committee concluded that to the extent that such commercial restraints are not effectively curbed by either the antitrust laws or the Labor-Management Relations Act, appropriate legislation should prohibit these union efforts at outright market control.

As to agricultural exemptions from the antitrust laws, such as those for agricultural cooperatives, the Committee concluded that these were based on Congressional determination of political and social as well as economic issues. After reviewing the decisions, the Committee concluded that coercion of competitors or customers or the achievement of monopoly power by an agricultural cooperative was not compatible with antitrust policy. It urged that "where cooperatives attempt to or actually obtain monopoly power by means not sanctioned by Section 1 of Capper-Volstead, the Sherman Act should apply even though the monopolized product's price is not unduly enhanced." The Committee further suggested that the Secretary of Agriculture review each case with the Department of Justice and the Federal Trade Commission to determine whether the cooperatives had exceeded the exemption afforded them.

Some members of the Committee urged that because the Secretary of Agriculture had over two decades failed to institute a single proceeding against any agricultural cooperative, the enforcement of the antitrust laws in this area be put in the Department of Justice. Other members dissented by pointing ". . . to the sequence of amendments which permit inclusion in marketing agreements and orders—and consequent total exemption from antitrust scrutiny—of provisions covering production controls, surplus pools, allocation of raw materials, standardization, unfair methods of trade and unfair competition, techniques of marketing, etc. Historically these provisions paralleled, and analytically they incorporate, most of the anti-competitive vices of the N.R.A. These members feel their impact upon processors and distributors and consumers, as well as their erosion of antitrust policy in wide areas, warrant close re-examination."

Economic Indicia of Competition and Monopoly

The report includes a long chapter contrasting the approach of economists and the approach of the courts to issues of monopoly and competition. This section deals with an analysis of "competition," "workable competition" or "effective competition" as theoretical concepts, the economists' definition of markets, and the like. It analyzes in detail the meaning of price discrimination as viewed by economists and the meaning of that term under the Robinson-Patman Act.

Administration and Enforcement

The final chapter of the report is devoted to antitrust administration and enforcement. The Committee recommended legislation which would authorize the Attorney General in a civil antitrust investigation to use a Civil Investigative Demand for documents rather than having to resort, as at present, to the use of a grand jury inquiry to secure them. The report further deals with the standards which should govern the choice by the Department of Justice of using either a civil or criminal proceeding to enforce the antitrust laws. In general the Committee recommended that the criminal process be used for price fixing violations, specific attempts to monopolize, or second offenses.

The report likewise embodies a comprehensive analysis of the use of consent settlements in antitrust cases whose use it recommends. It likewise makes certain technical suggestions for the handling of antitrust cases by the Department of Justice. A specific legislative recommendation is that the penalty for violation be increased from $5,000 to $10,000. A cautionary suggestion on the use of divestiture as a remedy is developed in this final chapter of the report. Lastly, the report offers suggestions as to methods of cooperation between the Department of Justice and the Federal Trade Commission, and recommends a uniform four-year federal statute of limitations on treble damage actions as well as giving the United States the right to bring such damage suits.

1954 Packs of Leafy Greens

Reports on the 1954 packs of canned leafy greens have been issued by the N.C.A. Division of Statistics.

	1953	1954
	(actual cases)	
Turnip greens	1,080,771	1,226,921
Mustard greens	651,317	625,201
Other greens	471,147	253,205
Turnip greens:		
Maryland	29,704	50,611
Ozarks	615,095	743,160
Texas	37,921	48,500
Other states	398,051	384,650
U. S. Total Turnip greens	1,080,771	1,226,921
Mustard greens:		
Maryland	n.a.	12,162
Ozarks	n.a.	456,540
Texas	n.a.	11,522
Other states	n.a.	144,977
U. S. Total Mustard greens	651,317	625,201

Other states include Calif., Fla., Ga., Miss., Tenn., and Va.

Pack of Canned Meat

The quantity of meat canned and meat products processed under federal inspection during the month of March has been reported by the Agricultural Marketing Service, USDA, at 164,473 thousand pounds, including quantities for defense.

Canned Meat and Meat Products Processed under Federal Inspection March, 1955

	3 Lbs. & over	Under 3 Lbs.	Total
	(thousands of pounds)		
Luncheon meat	12,896	8,694	21,590
Canned hams	17,014	326	17,340
Corned beef hash	214	7,108	7,322
Chili con carne	462	8,906	9,368
Vienna sausage	92	4,228	4,320
Frankfurters and wieners in brine	29	112	141
Deviled ham	.....	667	667
Other potted and deviled meat products	.....	3,126	3,126
Tamales	192	2,179	2,371
Sliced, dried beef	27	436	463
Chopped beef	138	1,801	1,939
Meat stew	95	6,502	6,597
Spaghetti meat products	196	4,696	4,892
Tongue (not pickled)	96	60	156
Vinegar pickled products	648	1,443	2,091
Sausage	23	669	692
Hamburger	39	1,482	1,521
Soups	1,434	47,228	48,662
Sausage in oil	250	168	428
Tripe	1	282	283
Brains	.....	162	162
Canned loins and picnics	1,829	51	1,881
All other products 20% or more meat	224	6,740	6,964
All other products less than 20% meat (except soup)	197	15,979	16,177
Total	36,106	123,048	159,154

Columns do not add to totals shown in all cases since rounded figures are used. Amounts packed for defense are not included in these items. Total production, including quantities for defense agencies, was 164,473 thousand pounds.

Status of Legislation

Wage-Hour legislation—Senate Labor Subcommittee continued public hearings on legislation to amend Fair Labor Standards Act (see story, page 195).

Trade Agreements Act—H. R. 1 was passed by House Feb. 18. Senate Finance Committee reported H. R. 1, with amendments, April 28 (see story, page 202).

Renegotiation—H. R. 4904, providing a two-year extension of the Renegotiation Act of 1951—to December 31, 1956—was reported by the House Ways and Means Committee April 27 and passed by House April 28.

Price Supports—H. R. 12, restoring rigid price supports at 90 percent of parity, was reported by House Agriculture Committee March 10. House Rules Committee on April 27 approved an open rule providing four hours of general debate on H. R. 12.

USDA appropriations—H. R. 5239 was passed by House March 28 and by Senate, with amendments, April 26 (see story, page 195).

Statehood—H. R. 2535, providing statehood for Alaska and Hawaii, was reported by House Interior and Insular Affairs Committee March 3. House Rules Committee on April 27 reported a closed rule providing seven hours of general debate on H. R. 2535.

Antitrust suits—H. R. 4954, providing a uniform statute of limitations for antitrust cases, was passed by House without amendment April 26 and sent to Senate (see story, page 202).

Antitrust penalties—H. R. 3659, to increase maximum penalties under the Sherman Act, was passed by House March 29. Senate Judiciary Committee has not scheduled hearings.

Tin—S. Con. Res. 26, expressing the sense of Congress favoring continued operation of the government-owned tin smelter at Texas City, Tex., was passed by Senate April 25 and sent to House.

Summary of Supply, Stocks, and Shipments of Canned Foods

Following is a summary of the supply, stock, and shipment situation for canned foods, showing carryover into the current season, total supply, canners' stocks on April 1, and season shipments to April 1:

SUPPLY, STOCKS AND SHIPMENTS CANNED FRUITS, VEGETABLES, AND JUICES

Commodities	Carryover		Supply		Canners' Stocks, April 1,		Season Shipments to April 1,	
	1953	1954	1953	1954	1954	1955	1954	1955
	(thousands of cases)							
Fruits, vegetables, and juices	43,580	57,849	332,871	342,070	109,480	107,195	223,389	235,475
Fruits, total	13,997	15,328	93,809	97,430	29,732	32,075	64,077	65,355
Apples[a]	178	147	3,116	4,849	693	2,220	2,423	2,629
Applesauce	179	541	11,366	15,554	3,220	6,402	8,146	9,151
Apricots	777	1,344	6,605	4,756	2,090	849	4,515	3,907
Cherries, sweet	370	300	1,910	1,782	489	612	1,421	1,170
Cherries, RSP	113	167	3,962	3,253	707	521	3,254	2,732
Grapefruit segments[b]	168	514	4,864	6,501	2,430	3,724	2,433	2,777
Peaches	3,424	4,172	27,636	25,113	8,269	5,794	19,368	19,320
Pears	1,767	1,115	8,977	10,881	2,175	3,554	6,802	7,327
Pineapple	6,532	6,672	23,504	22,623	9,076	7,535	14,429	15,088
Plums, purple	480	356	1,869	2,118	583	864	1,286	1,254
Vegetables, total	19,681	23,805	156,255	163,590	46,673	44,394	109,581	119,197
Beans, green and wax	332	2,269	24,229	31,117	4,300	9,222	19,929	21,895
Catsup	6,462	5,691	25,577	26,616	10,165	7,284	15,412	19,332
Chili Sauce	861	884	3,425	2,863	1,348	972	2,076	1,892
Corn	2,317	5,145	38,562	41,906	13,722	15,764	24,840	26,142
Peas	3,420	4,243	34,786	31,488	8,309	5,796	26,477	25,692
Pumpkin and Squash	1,330	1,359	3,876	3,145	1,506	297	2,370	2,848
Tomatoes	4,950	4,214	25,800	26,455	7,323	5,050	18,477	21,396
Juices, total	9,908	18,716	82,807	81,650	33,075	30,726	49,731	50,923
Grapefruit[b]	186	2,297	9,222	10,016	3,384	4,343	5,838	5,673
Orange[b]	105	1,240	13,416	16,917	4,955	6,262	8,461	10,655
Orange and grapefruit blend[b]	70	502	4,385	3,920	1,629	1,452	2,755	2,468
Pineapple	3,314	4,564	16,817	17,257	8,796	6,464	11,021	10,793
Tomato	6,233	10,113	38,967	33,540	17,311	12,205	21,656	21,394
Sauerkraut (bbl.)	124	272	797	839	362	344	435	495
Baby foods (doz.)	65,305	74,083	97,959	107,795	59,329	68,659	38,630	39,136

[a] Basis 6/10. [b] Carryover 1953—Nov. 1; 1954—Oct. 1.

Antitrust Suits

The House on April 26 passed and sent to the Senate H. R. 4954, to authorize the United States to recover actual damages for antitrust violations and to set a uniform statute of limitations of four years for antitrust cases.

The House Judiciary Committee's report explains the proposed legislation as follows:

The bill would amend the Clayton Act to provide "that the United States, whenever it is injured in its proprietary capacity by virtue of violations of the antitrust laws, may institute an action to recover actual—as distinguished from treble—damages incurred thereby." Private damage actions as well as damage suits by the United States would be governed by a uniform federal statute of limitations of four years. Such actions are presently controlled by state laws which vary from one to 20 years.

The statute of limitations for private antitrust actions would be extended for an additional year after the termination of a government antitrust proceeding so that private parties might take "full advantage of a final government decree as prima facie evidence of their case and have sufficient time in which to file suit."

The bill would be effective six months after its enactment. During a six-month period of grace, private actions might be brought, in states having statutes of limitations longer than four years, by persons whose causes of action have accrued for more than four years.

Trade Agreements Act

After almost two months of hearings and committee study, the Senate Committee on Finance on April 28 reported, with amendments, H. R. 1, to amend and extend the Trade Agreements Act.

As reported by the Committee, the bill contains much of the program recommended by the President but also includes a number of amendments aimed at restricting the President's tariff-cutting power and providing additional protection for domestic industry.

H. R. 1 would extend for three years —to June 30, 1958—the authority of the President to enter into reciprocal trade agreements and to reduce tariff rates.

(1) To carry out a trade agreement with Japan and other countries, for which negotiations currently are under way at Geneva, the President would be authorized to reduce tariffs to a level no lower than 50 percent of the rates in effect January 1, 1945.

This is the authorization under present law, and would be extended to permit completion of the current negotiations.

(2) To carry out all other trade agreements, entered into during the three-year period, the President would be authorized to reduce tariffs by 15 percent of the rates in effect January 1, 1955, but by no more than 5 percent a year.

The base date in the House-passed bill is July 1. With the change in base date recommended by the Finance Committee, the new 15 percent authority would not be applicable in the case of any product whose duty is reduced by 15 percent or more in the current negotiations.

This is the so-called "textile" amendment, designed to protect that industry from further tariff reductions occurring soon after the sharp reductions which are expected to result from the current negotiations. This amendment will be of equal benefit to fish canners and other manufacturers who are concerned about the negotiations with Japan.

(3) Or, the President would be authorized to reduce tariff rates to 50 percent ad valorem or its equivalent on any article for which the tariff now is above that rate, in stages of not more than one-third of the reduction each year.

The President had recommended and the House had voted authority to reduce tariffs on articles normally "not imported" or "imported in negligible quantities," but the Finance Committee eliminated this provision because these terms could not be defined.

Other amendments recommended by the Finance Committee would:

(1) Permit the President to subdivide tariff classification categories, so as to prevent the State Department from granting concessions on a number of products included in a so-called "basket" classification, as was done with canned tuna in brine;

(2) Require the Tariff Commission, in considering applications for higher tariffs to protect domestic industry, to consider increased imports of specific products, rather than to consider aggregate imports of all items and the economic status of multi-product producers;

(3) Require the Tariff Commission to make public immediately its reports on such escape clause investigations, rather than await the President's announcement of his action on them;

(4) Require the Tariff Commission and the President to submit separate reports on the operation of the trade agreements program; and

(5) Authorize the President to limit imports of any product whenever necessary to protect the national security. This is a compromise amendment adopted by the Finance Committee in lieu of establishing import quotas on petroleum and other products.

Senator Byrd (Va.), chairman of the Finance Committee, has announced that he will call up H. R. 1 for Senate consideration on Monday, May 2.

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INFORMATION LETTER

Not for Publication — NATIONAL CANNERS ASSOCIATION — For Members Only

No. 1535 — Washington, D. C. — May 7, 1955

Farm Groups Testify on Wage-Hour Legislation

On May 3 representatives of agricultural groups appeared before the Senate Labor Subcommittee. Three major groups appearing were the American Farm Bureau Federation, National Council of Farmer Cooperatives, and the Vegetable Growers Association of America.

Lee Towson of the Vegetable Growers testified that there is no justification for the argument that a $1.25 statutory minimum was needed to boost the national economy. In their opinion, he said, the fact that the purchasing power of the dollar has been stabilized is far more important to the wage earner than an increased wage. Further, Mr. Towson continued, artificial and arbitrary wage increases without corresponding productivity are inflationary, and they "can find nothing in the statistics relating to national production and employment which would warrant any such inflationary tinkering."

The Vegetable Growers contended that partial exemption from overtime is as essential today as when the Act was passed, pointing out that "the vegetable industry is a highly seasonal operation dealing with highly perishable products in harvesting and processing as well as marketing. Operating only a few weeks in each year, operations cannot be spread out over the year. The labor used in these operations is mainly part-time, welcoming the opportunity for the added income at the prevailing wage rates."

"The strong economic condition of our country at the present time does not even give the proponents of the legislation any excuse to use the oft-heard cry of 'emergency' and 'pump-priming.' You do not prime a pump that is running at full capacity and the only 'emergency' that we know of is of a synthetic political nature."

Matt Triggs, spokesman for the Farm Bureau, stated that the present "area of production" exemption from the minimum wage-hour regulations are "vague and ill defined." The Farm Bureau recommended that the "agricultural processing establish-

(Please turn to page 206)

Civil Defense Values of Canned Foods Tested in Nuclear Explosion

Approximately 25,000 samples of about 60 different canned foods in various-sized tin and glass containers were exposed to the effects of a nuclear explosion at the Nevada proving grounds May 5 in the first scientific test of the effects of such a nuclear explosion on various kinds of foods.

The canned foods test is part of an over-all civil defense test of foods, clothing, furniture, buildings, utilities, and other goods and services essential to the everyday existence of a civilian population. An N.C.A. technical group will examine post-blast effects on the canned food samples and will report later.

The N.C.A. is participating in the civil defense tests at the invitation of the Federal Civil Defense Administration, which contracted with the Association last fall for the furnishing of samples, technical assistance in setting up the tests, and further scientific testing of the effects of the explosion.

The value of the tests to the canning industry will be to establish that canned foods in tin and glass may be used safely under such extreme emergency.

The test includes a wide variety of canned foods, selected on the basis of largest volume used by consumers. The canned foods in the test were donated by 153 canners. The samples were exposed under conditions representative of normal handling in storage and use in the home and in emergency shelters.

Canned and glass packed foods were exposed to the explosion at about 18 different locations ranging from 1,050 to 15,000 feet from ground zero, and in various exposure conditions (both cased and uncased in most of them): on the surface of the desert floor to test fall-out effects; on shelves, in cupboards, and on the floors of kitchens and basements of test structures; in emergency shelters; in industrial type structures for testing of the foods under conditions of retail storage and handling; and in shallow trenches near enough to the explosion to test radioactivity in the absence of blast effects. Some of the test samples will be used in long-range animal-feeding experiments to check for possible toxicity.

In a press statement issued jointly by the Federal Civil Defense Administration, the Department of Defense, and the Atomic Energy Commission, the tests are explained as follows:

"Test effects to be examined include those of neutron and gamma irradiation of foods; the problems resulting from fall-out on foods and packaging, including decontamination feasibility; and the effects of blast and thermal radiation on food packaging.

"Food test stations will be placed just below the level of the ground at two positions along the main FCDA test line. In addition, food will be placed in a number of test structures,

(Please turn to page 204)

Post-Blast Report

From observations made within six hours after the atomic blast of May 5, it can be stated with considerable assurance that the test foodstuffs would be suitable for emergency feeding. In residential structures, 4,700 feet from ground zero, commercially packaged foods came through the test relatively better than the houses in which they were stored, and were found substantially free of radioactivity. Food products in physically intact packages were found acceptable for use. Failure of packages was due largely to gross dislodgement from cupboards or from flying missiles. There was no bursting by blast overpressures. Generally, the containers stored in basements fared better than those in cabinets. There are no reports yet on results obtained closer to the blast.

Values of Canned Foods

(Concluded from page 203)

including residences and commercial buildings. Some samples will be exposed in locations where maximum fall-out is expected. Others will be exposed primarily to blast. The purpose of the below-ground food stations is to expose the various kinds of food to neutron and gamma radiation without causing the food packages to be disrupted by blast. The stations are actually just below ground level with a very light covering of earth sufficient to attenuate the neutrons or gamma rays to an appreciable degree.

"The project will determine which foods subjected to neutron or gamma irradiation may tend to become radioactive or toxic."

Including the 60 different canned foods, a wide range of food products was exposed. In addition to the heat-sterilized foods, staples such as flour and sugar, semiperishables such as potatoes and processed meats, and perishables such as fresh meats, butter, and frozen foods were included.

Designated as Program 32, the food test projects are sponsored by the FCDA, the U. S. Department of Agriculture, the Food and Drug Administration, the Department of Health, Education, and Welfare, the N.C.A., Can Manufacturers Institute, Glass Container Manufacturers Institute, Grocery Manufacturers Association, American Meat Institute, National Association of Frozen Food Packers, and the Evaporated Milk Association.

The canned foods test was planned and carried out with the help of a committee consisting of representatives of the N.C.A., C.M.I., G.C.M.I., and the American Meat Institute. A technical operating group worked in a West Coast warehouse for several weeks assembling and coding the samples so that they could be identified in post-blast checks, and spent several weeks at the Nevada test site placing the items.

One of the special exhibits at the test site was "Grandma's Pantry," containing a supply of foods of all types considered adequate to feed an average family of four for a minimum three-day period of emergency. Two identical pantries were set up, one in a basement and the other in the kitchen of test houses.

Representatives of the N.C.A. and C.M.I. furnished about 300 cans of recommended emergency foods for "Grandma's Pantry." Counting different sizes of containers, these represent about 80 different items and about 30 different commodities.

"Grandma's Pantry" was the subject of an N.C.A. release and also an official government release issued at the FCDA press table in Las Vegas.

Members of the Technical Operating Group who were active at the test site during the course of the test are C. A. Greenleaf, Ira I. Somers, J. M. Reed, and Charles P. Collier of the N.C.A., E. R. McConnell and George Sampson of C.M.I., and Harry W. Kuni and John Sharf of G.C.M.I.

Present to handle publicity for their industries, at the scene, were Nelson H. Budd of N.C.A., H. Ferris White of C.M.I., and Mr. Kuni of G.C.M.I. Other industry observers were Katherine R. Smith of N.C.A., W. J. Mutschler of C.M.I., and H. A. Barnby of G.C.M.I.

When the explosion was scheduled for April 26, Las Vegas and the test site were the scene of elaborate exercises under supervision of the Federal Civil Defense Administration, the Atomic Energy Commission, and the Department of Defense. About 500 representatives of newspapers, magazines, radio and TV stations, along with nearly 1,000 industry observers, volunteer civil defense workers, and others, were on hand to inspect the test installations, witness the open shot and examine the resultant effects on food, clothing, furniture, buildings, utilities, and other goods and services that had been built into a representative civilian settlement.

Although the postponement of the blast prevented full realization of the planned demonstration, the hundreds of press and other visitors were able to examine the units set up for testing, including the canned and glass packed food installations. This provided an opportunity for publicizing the fact of canned foods participation in the test.

Publicity accomplishments achieved during the Las Vegas special exercises were:

A background statement, which includes statements on laboratory findings with respect to the protective values of canned foods and their containers under conditions of atomic, biological, and chemical warfare, was distributed to 500 representatives of all types of news media.

A photograph showing cases of canned foods being buried just below ground level was distributed nationally on wirephoto services of the Associated Press, United Press, and International News Service, and appeared in numerous newspapers across the country.

A special spot showing canned foods as part of the test was included in NBC's "Home Show" which was televised over 78 stations April 25.

The canned foods tests also were mentioned in several other national hook-up broadcasts and telecasts from Las Vegas, including the Dave Garroway program and by many of the national news commentators including John Cameron Swayze and Morgan Beatty.

Personal contacts were made with correspondents representing newspaper wire services, newspapers, magazines, and other news media, and special mention of the canned food tests was made in numerous stories filed from the test site.

The following press release, pointing up the importance of canned foods as an emergency food supply, was issued by the FCDA on April 24:

Seven-day Food, Water Supply Is Recommended by FCDA

"The Federal Civil Defense Administration recommended today that families and individuals keep a 7-day reserve supply of food and water on hand as a home defense against nuclear attack.

"Theodore M. Willcox, acting director of the FCDA Welfare Office, said this increase over previous recommendations for a 3-day supply results from superbomb hazards.

"The delayed second blow of the hydrogen bomb—radioactive fall-out—may cause longer confinement under shelter.

" 'The change is an evolution in our planning to safeguard Americans in the light of new disclosures about the larger weapons,' Mr. Willcox said. 'The weapons have grown bigger and our planning must change accordingly.'

"He pointed out that fall-out 'might keep people in shelters for anywhere from a few days to a week, depending on the intensity of the radiation resulting from fall-out,' and added:

" 'If families and individuals plan against the larger hazard, it stands to reason that there would be considerably less suffering.'

"Since the fall-out problem became known, FCDA has been urging that all stocks of food and water set aside for emergencies should be in tin or glass containers or, in the case of dry foods, in substantial cardboard packages.

"It proposed that such food supplies, along with a battery-operated radio, first-aid kit, soap, blankets, and other items that might be required in an emergency be kept in the shelter area of every American home.

"Mr. Willcox said that the 7-day supply of food should be assembled in such packages that those who would use it could take it with them if evacuation were ordered.

"He also reminded housewives that supplies in the emergency kit should be rotated—used and replaced periodically—to insure freshness at the time they might be needed."